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2004 OCT 12 P 5: 06

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October 12, 2004

Office of General Counsel
Attn: Jeff S. Jordan
Supervisory Attorney
Complaints Examination and Legal Administration
The Federal Election Commission
999 E Street N.W.
Washington, D.C. 20463

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2004 OCT 13 A 9: 15

In re: MUR: 5533

Dear Mr. Jordan:

I have enclosed Nader for President 2004's response to Complaint MUR 5533 recently filed with your office. Please note that I am acting as counsel for both the Committee and for Carl Mayer, Treasurer.

If you have any questions, please feel free to contact me.

Thank you for your consideration of our response.

Sincerely,



Bruce I Afran

Enclosures

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Re: **MUR 5533: Complaint Filed September 20, 2004**

This represents the Nader campaign's response to the complaint of Mark Brewer concerning certain assertions arising out of the State of Michigan.

Under the Commission's rules, an independent expenditure does not become an in-kind contribution unless it is "coordinated with a candidate [or] an authorized political committee...", 11 C.F.R. 109.21, and meets one of the "conduct" prohibitions in 11 C.F.R. 109.21(d). These "conduct" prohibitions consist of a communication that is:

created, produced or distributed "at the request or suggestion of a candidate" or where the candidate "assents" to such communication (109.21(d)(1)(i) and (ii); or

where the candidate or his committee "is materially involved in" the communication or its dissemination (109.21(d)(2); or

where the candidate or committee has "substantial discussions" with the person paying for the communication. (109.21(d)(3).

Thus, section 109.21(d) requires affirmative, material or substantive conduct by the campaign with respect to a communication before an independent group's activity can be deemed an in-kind contribution. Moreover, as noted below, a volunteer petition drive is a protected civil liberty act and is exempt as an in-kind contribution under 11 C.F.R. 100.74. As developed below, no evidence is presented by the complainant that these activities in Michigan were anything other than unpaid volunteer endeavors and, as such, they are exempt as contributions.

Further, nowhere does the complaint describe any coordination by the Nader campaign with these Republican volunteers. Indeed, at no point in Mark Brewer's complaint does he refer to any activity of any kind by the Nader campaign in connection with the gathering of nominating signatures by these alleged Republican circulators. Brewer refers to no communications between the Nader campaign and these individuals; Brewer refers to no involvement, either substantive or de minimis, by the Nader campaign in these alleged Republican activities; Brewer refers to no discussions of any kind between the Nader campaign and these individuals or their activities. None of the acts of coordination defined in section 109 by the Commission in its regulations are alleged, not even remotely, by the complainant.

In any event, these Republican activities appear to have been wholly volunteer and unpaid, and, as such, would be exempt as contributions under 11 C.F.R. 100.74. No evidence is offered by the complainant that these were anything but volunteer activities. The e-mail attached as Exhibit A to Brewer's complaint completely undermines any claim by Brewer that any in-kind expenditures were made by these individuals. Exhibit A is an e-mail from the Michigan Republican executive director, Greg McNeilly, who asks Republicans to recruit volunteers to gather nominating signatures for nader's independent petition. He even asserts that Michigan Republicans are spending no money in this effort:

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“While the Michigan Republicans are expending no funds to assist Nader’s efforts, we are seeking volunteer help to ensure Nader’s ballot access”. Exhibit A [emphasis added].

Thus, complainant Brewer’s own exhibit shows that “no monies” were spent by the Michigan Republicans and that they were seeking “volunteers” to assist in this effort.

Regardless of any other issues, there is simply no basis for the complainant’s demand for a monetary payment by the Nader campaign since the complainant offers no proof that anyone spent any money for this petition drive. Petition gathering is a fundamental aspect of protected First Amendment activity in the context of election campaigns. Such activities by any persons are lawful and protected by the Constitution’s free speech, association and liberty guarantees. See e.g., Meyer v. Grant, 486 U.S. 414, 421-22 (1988).

No basis exists in law for the proposition that members of one political party may not independently gather petitions for a candidate of another party, as the Republican volunteers in Michigan appear to have done. These people were engaged in the highest form of protected activity and they did so independently and without communication, discussion or any other form of coordination with the Nader campaign.

Complainant Brewer does not dispute these facts. His only factual assertion is that because of certain language in a Michigan court ruling Nader, after the petitions were circulated and filed, somehow engaged in “coordination” with these Republican volunteers. It must be stressed that none of the Republican circulated signatures were given to the campaign, received by the campaign, coordinated with the campaign and were not filed by the campaign.

Specifically, Brewer relies on a part of the Michigan Court of Appeals decision that suggests that because Ralph Nader did not withdraw from the ballot as of the withdrawal deadline, he “ratified” the gathering of the signatures. See, Court of Appeals Decision, Exhibit B to the Complaint at 3.

This holding, however, is a factor of Michigan common law which had never before been applied to an elections case. The “ratification” doctrine was relied upon by the Court of Appeals to find that a Republican volunteer who had gathered signatures had standing to defend the signatures before the Michigan Board of Canvassers and the Court of Appeals.

Obviously, this alleged act of ratification, i.e., Nader’s failure to withdraw from the ballot, occurred after the circulation and filing of the petitions had been completed. Accordingly, even if it operated under Michigan law to invest a circulator with standing to defend the petitions, this is a technical application of the ratification doctrine that is unrelated factually to the actual circulation and gathering of signatures, which occurred independently of the Nader campaign, in full compliance with FEC regulations. Under these circumstances, none of the coordination provisions of 11 C.F.R. 109 are implicated.

Mr. Nader and his campaign have gone to great lengths to avoid any involvement with these Republican efforts which were never sought and never encouraged. The campaign

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never on any occasion participated in any manner in the circulation of these petitions, in soliciting these Republican volunteers or in filing the Republican-circulated petitions, or in undertaking any other act in connection with these petitions; this was a completely independent effort by these Republicans who had no connection of any kind with our campaign. The complainant himself confirms this by his complete failure to make any such allegations. The Nader campaign did not even appear in court or at the Michigan Board of Canvassers to defend these Republican signatures, an act that was intentionally taken to avoid any inference that the campaign had adopted these signatures as its own.

When the campaign filed its own collection of signatures with the Michigan Secretary of State, it expressly stated that it did so knowing that it had insufficient numbers to satisfy Michigan law, which required 37,000 signatures. The Nader campaign said in its transmittal letter to the Secretary of State that it was filing 4,500 signatures solely to establish a basis on which to later seek extension of the filing deadline for gathering signatures. The campaign had suspended its signature drive in May 2004 when it learned that Ralph Nader was nominated by the Reform Party and no longer needed to gather signatures for Michigan's independent, non-party line.

However, in early July, 2004, due to a dispute within the Reform Party, the Michigan Secretary of State denied Nader's Reform Party designation, necessitating that the campaign file those 4,500 signatures it had earlier collected for the independent ballot line with the goal of later asking the Michigan courts to equitably extend the filing deadline. Counsel's attached transmittal letter made it clear that the purpose of the submission was to secure standing in court to later seek extension of the filing deadline. Counsel stated that the campaign was submitting these 4,500 signatures to demonstrate that it had gathered a sizable number of signatures and had the capacity to do so, if the courts would later expand the filing deadline:

"Accordingly, to preserve their rights to appear on the ballot in the event that their preferred Reform Party ballot position is not recognized by the courts, the Nader/Camejo campaign expects to file a minimum of approximately four thousand, five hundred (4,500) signatures on July 15, 2004.

Please be advised that this filing is prophylactic in nature and is intended to demonstrate the Nader/Camejo campaign's intent and ability to secure ballot position by qualifying petition, if necessary. We realize that this estimated filing will not in itself satisfy the signature requirement but we anticipate seeking equitable extension of the filing deadline due to the unexpected interference with our Reform Party ballot position. " See, Letter of Bruce I. Afran, July 14, 2004, annexed to this instant Response.

In my letter, I made it clear that the submission of signatures was for the purpose of creating standing to later seek extension by court order of the period for gathering signatures since the Nader campaign had earlier suspended its petition drive once it learned it was to appear on the Reform Party line. I closed by stressing that the campaign was still seeking to obtain the Reform Party line, its preference:

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“Under no circumstances should this submission of signatures be deemed to prejudice Mr. Nader and Mr. Camejo’s nomination by the Reform Party and the preservation of their claim to the Reform Party ballot position in Michigan. “

That application, to secure the Reform Party line, is still pending and the campaign has filed an appeal of the denial of the Reform Party line to the U.S. Court of Appeals for the Sixth Circuit.

Thus, the Nader campaign took extraordinary steps to distance itself from the Republican signature gathering and undertook no measures to adopt in any manner any signatures gathered by Republican volunteers. As the transmittal letter shows, the campaign submitted and laid claim only to the 4,500 signatures it had earlier collected. Indeed, the measures by the campaign were so stringent that the Michigan Court of Appeals was forced to resort to the novel and unusual concept of ratification by non-withdrawal from the ballot to create any link at all between the Nader campaign and the Republican circulators, one that is solely the result of a technical operation of law, never previously applied in such context and one that no entity, including the Nader campaign, had any reason to believe would be produced by the Court of Appeals.

Complainant Mark Brewer is the chair of the Michigan State Democratic Party: he has a direct interest in seeking the destruction of the Nader campaign and does not file this complaint as a disinterested party. He is unable to offer any evidence of any nature that there existed any coordination between the Nader campaign and these Republican volunteers. He further offers no evidence that anyone spent any money for this effort, a fact undermined by his own Exhibit A which plainly states that the Republican party spent no money and was only recruiting volunteers.

Conclusion

As the foregoing submission shows, there is no basis for the Commission to proceed further on the complaint.

Respectfully submitted,



Bruce I. Afran
Counsel for
Nader for President 2004
Carl Mayer, Treasurer

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July 14, 2004

Hon. Terri Lynn Land
Secretary of State
Department of State
430 W. Allegan
Lansing, Michigan

Christopher Thomas, Director
Bureau of Elections
Department of State
430 W. Allegan
Lansing, Michigan

Dear Secretary Land and Director Thomas,

I am counsel for the Nader for President 2004 campaign in this matter. I am writing in regard to your letter of July 9, 2004 concerning the submission of a certification of nomination for Ralph Nader and Peter Camejo as the Reform Party candidates for the office of President and Vice-president of the United States. That petition was signed by John Muntz as Chair and Eleanor Renfrew as Secretary of the Reform Party of Michigan.

In your department's letter of July 9, 2004 you state that you cannot accept the certification of nomination of Mr. Nader and Mr. Camejo "as the nominees of a qualified political party in Michigan" because of the existence of a purported dispute between individuals making conflicting claims to be Chair and Secretary of the Reform Party of Michigan. You base this statement on your subsequent receipt of a letter from Matthew Crehan who asserts that he is the Chair of the Reform Party of Michigan and who purportedly stated to you that Ralph Nader and Peter Camejo are not the nominees of the Reform Party.

Your office has concluded, apparently on the strength of American Independent Party v. Secretary of State, 397 Mich 689 (1976), that you have no duty to

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investigate and resolve said dispute and that you urge the parties to reach agreement on the representation of the Reform Party in the State of Michigan.

While I understand your concerns, I must stress that there is no need or basis for the Secretary of State or Division of Elections to resolve any disputed claim. The National Convention of the Reform Party of the United States of America acting upon the recommendation of its Credentials Committee on October 12, 2003 recognized the group chaired by Matt Johnson as its Michigan state committee. Mr. Johnson was subsequently succeeded by John Muntz as chair. Section 9(c) of the Constitution of the Reform Party of the United States of America provides that:

The National Convention shall:

* * *

c) have the exclusive power to grant Official Recognition to State Party Organizations. Official Recognition of a State Party Organization shall be granted by majority vote of the registered Delegates.

Constitution, Section 9, Reform Party of the United States of America.

Pursuant to the foregoing, John Muntz and Eleanor Renfrew are presently recognized as the State Chair and Secretary, respectively, by the Reform Party of the United States of America. See, State Contacts link of the Reform Party's national website, www.reformpartyUSA.org. In addition, Mr. Muntz is a member of the Reform Party's National Committee for the State of Michigan. See, National Committee icon, Committee link at www.reformparty.org.

Nowhere on any Reform Party website or other public record is Mr. Creehan recognized or acknowledged as the representative of the Reform Party in Michigan.

Mr. Shawn O'Hara, the national chair of the Reform Party has advised you by letter dated July 8, 2004 that neither Mr. Creehan nor Mr. Mark Forton have "any legitimate claim to leadership in the Reform Party of Michigan in the eyes of the National Reform Party". Mr. O'Hara has also stated to you that the division or split of the Reform Party in Michigan that was extant in 2000, and to which you refer in your July 9 letter, has been resolved in favor of Mr. Muntz and Ms. Renfrew by a vote of a majority of the delegates at the National Convention. See, Letter of Shawn O'Hara, July 8, 2004.

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Contrary to this documentary record, Mr. Crehan offers only the conclusory statement that Mr. Muntz and Ms. Renfrew do not represent the Reform Party and that Ralph Nader and Peter Camejo are not its nominees. Nowhere does Mr. Crehan substantiate this claim which is wholly controverted by the Reform Party's public records acknowledging Mr. Muntz and Ms. Renfrew as its Michigan leaders and publicly recognizing Ralph Nader and Peter Camejo as its nominees. News media reports have also widely acknowledged that Mr. Nader and Mr. Camejo have been nominated by the Reform Party.

Accordingly, there is no need for your office to "resolve" any dispute since the national party has already resolved this matter in favor of the group of which Mr. Muntz is chair. The Crehan claim amounts in substance to a refusal by an individual or group thereof to accept the ruling of the national party.

I must stress how seriously Mr. Nader and Mr. Camejo treat this matter and that we hope the Secretary of State will recognize their rights to be placed on the ballot without litigation. I look forward to further discussion with you and I do expect that your office will recognize my clients' rights without further controversy.

In the interim, however, your decision to withhold such recognition has forced my clients to reinvigorate their petition signature drive to seek nomination by qualifying petition pursuant to MCLA 168.590g. As you are aware, MCLA 168.590g recognizes a candidate's right to ballot placement by seeking nomination by qualifying petition. My clients had commenced a petition signature drive for this election cycle but did not devote the resources they would have in the ordinary case because they learned they were likely to receive the nomination of the Reform Party of the United States of America. Your July 9, 2004 letter refusing to accept their ballot placement in the Reform Party column has forced my clients' to recommence said signature drive to maintain their ability to seek access to the ballot by alternate means.

Accordingly, to preserve their rights to appear on the ballot in the event that their preferred Reform Party ballot position is not recognized by the courts, the Nader/Camejo campaign expects to file a minimum of approximately four thousand, five hundred (4,500) signatures on July 15, 2004.

Please be advised that this filing is prophylactic in nature and is intended to demonstrate the Nader/Camejo campaign's intent and ability to secure ballot position by qualifying petition, if necessary. We realize that this estimated filing

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will not in itself satisfy the signature requirement but we anticipate seeking equitable extension of the filing deadline due to the unexpected interference with our Reform Party ballot position. Under no circumstances should this submission of signatures be deemed to prejudice Mr. Nader and Mr. Camejo's nomination by the Reform Party and the preservation of their claim to the Reform Party ballot position in Michigan.

We would appreciate your acknowledgment of the foregoing.

Very truly yours,



Bruce I. Afran

C: Mr. Brad Whitman,
Director Information Services

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STATEMENT OF DESIGNATION OF COUNSEL

Please use one form for each respondent.

MUR 5533

NAME OF COUNSEL:

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OFFICE OF GENERAL
COUNSEL

2004 OCT 13 A 9:1

The above-named individual is hereby designated as my counsel and is authorized to receive any notifications and other communications from the Commission and to act on my behalf before the Commission.

Print Name

Theresa Amato / Nader for President 2004
Carl Meyer, Treasurer

Date

10/12/04

Signature

[Signature]

Title

Campaign Manager

RESPONDENT'S NAME:

Nader for President 2004 / Carl Meyer
Treasurer

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